

REPRESENTATIVE FOR PETITIONER:  
Tony L. Hiles, Vice President of Von Incorporated

REPRESENTATIVE FOR RESPONDENT:  
Julie Newsome, Huntington County Deputy Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Yvonne L. Hiles & Von Inc.	)	Petition No.:	35-005-11-3-5-82421-15
	)		
Petitioner,	)	Parcel No.	35-05-14-100-729.400-005
	)		
v.	)	County:	Huntington
	)		
Huntington County Assessor,	)	Township:	Huntington
	)		
Respondent.	)	Assessment Year:	2011

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Appeal from the Final Determination of the  
Huntington County Property Tax Assessment Board of Appeals

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**Issued: February 13, 2017**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **ISSUE**

1. Is Petitioner able to challenge the subject parcel's value and the application of an influence factor on a Form 133 petition? And if so, did Petitioner prove the subject parcel's assessment is incorrect?

### **PROCEDURAL HISTORY**

2. Petitioner initiated a 2011 assessment appeal by filing a Petition for Correction of an Error ("Form 133") with the Huntington County Auditor on May 8, 2015. On October 16, 2015, the Huntington County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying the Petitioner any relief. On December 8, 2015, Petitioner filed the Form 133 appeal with the Board.
3. Dalene McMillen, the Board's designated administrative law judge, held a hearing on November 15, 2016. Neither she nor the Board inspected the property.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

4. The following people were sworn and testified:

Tony L. Hiles, Vice President of Von Incorporated  
Terri L. Boone, Huntington County Assessor  
Julie Newsome, Huntington County Deputy Assessor.

5. Petitioner offered the following exhibits:

Petitioner Exhibit 1 – Form 133 petition,  
Petitioner Exhibit 2 – Note stating "Kent Bowers (Real Estate Agent 21 Century) is on record from previous hearing. He said this lot as has no value,"

- Petitioner Exhibit 3 – Chapter 2 – pages 9, 43-47 & 49 of the Real Property Assessment Guidelines (“Guidelines”),
- Petitioner Exhibit 4 – Petitioner’s description of the subject property,
- Petitioner Exhibit 5 – Property record card (“PRC”),
- Petitioner Exhibit 6 – Aerial map of the subject property,
- Petitioner Exhibit 6A – Aerial map of the subject property,
- Petitioner Exhibit 7 – 2009 & 2010 Summary of Taxes, dated March 24, 2010,
- Petitioner Exhibit 8 – 2009 & 2010 Corrected Summary of Taxes, dated April 22, 2010,
- Petitioner Exhibit 9 – Notice of Assessment of Land and Structures – Form 11, dated September 10, 2010,
- Petitioner Exhibit 10 – 2012 & 2013 Summary of Taxes, dated April 24, 2013,
- Petitioner Exhibit 11 – Zoning code for the City of Huntington, Indiana,
- Petitioner Exhibit 12 – PRC for comparable property #35-05-14-100-291.000-005.

6. Respondent offered the following exhibits:

- Respondent Exhibit 1 – Form 133 petition,
- Respondent Exhibit 2 – 2011 PRC,
- Respondent Exhibit 3 – Department of Local Government Finance (“DLGF”) memorandum “Legislative Changes Affecting the Correction of Error Appeal,” dated May 7, 2014 and Indiana Code § 6-1.1-15-12.

7. The following additional items are part of the record:

- Board Exhibit A – Form 133 petition,
- Board Exhibit B – Hearing notice,
- Board Exhibit C – Hearing sign-in sheet.

8. The assessed value for 2011 is \$6,400.

9. The Form 133 claimed a total assessment of \$100.

10. The subject property is a 60 foot by 145 foot vacant lot located on Lindley Street in Huntington.

## SUMMARY OF PETITIONER'S CONTENTIONS

11. Petitioner testified that for the 2011 assessment year the taxes were first due on May 10, 2012, therefore the deadline to file the Form 133 petition was May 10, 2015. He filed his petition on May 8, 2015, and thus he argues it was timely filed. *Hiles testimony.*
12. Petitioner argued that a negative influence factor improperly removed by Respondent should be reapplied to the land.<sup>1</sup> Plus, assessment “standards” were not followed in valuing the land. According to Petitioner, the criteria outlined in the Guidelines were not considered by Respondent in valuing the subject lot. *Hiles argument; Pet’r Ex. 1, 3 & 5.*
13. Petitioner claims that the property’s original assessment in 2010 was \$600, but after a site visit by Ms. Newsome, the 90% negative influence factor was removed from the lot, the assessment increased to \$6400, and a corrected bill was mailed on April 22, 2010. The \$6400 assessment was also carried forward to 2011. However, in 2012 Respondent hired Accurate Assessment, a company located in Fort Wayne, to reassess property in Huntington County. As a result of that 2012 reassessment, the 90% negative influence factor was reinstated and the land value was reduced from \$6400 to \$700.<sup>2</sup> *Hiles testimony; Pet’r Ex. 7-10.*
14. Petitioner argues the parcel at issue is located in a flood zone, and that it lacks a driveway, a sidewalk, and public utilities. Petitioner argues there is limited access to the property and that approximately 80% of the lot is only accessible through an alley. The property also has topography issues including a ravine that makes the shape of the lot irregular and thus limits its use. *Hiles testimony; Pet’r Ex. 4 & 6-6A.*

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<sup>1</sup> Petitioner claims the Respondent hired Accurate Assessments to “reassess” property in 2012 and as a result of that reassessment, the subject property was given a 90% negative influence factor and the land was reduced from \$6400 to \$700. *Hiles testimony; Pet’r Ex. 5.*

<sup>2</sup> Petitioner claims he waited three years to file the Form 133 petition for 2011 because in 2010, the Respondent told him that she could go back three years and raise his assessed value, which would increase the taxes. Petitioner claims it occurred to him in 2015 that he could also go back to the 2011 assessed value and claim a refund on difference in the assessed value from the increase in 2010 of \$6400 to the reduction in 2012 to \$700. *Hiles testimony.*

15. Petitioner claims that according to the City of Huntington's zoning code, because the subject property is in a flood zone, he "can't basically move a shovel full of dirt without permission." *Hiles testimony; Pet'r Ex. 11.*
16. Petitioner offered a 60 foot by 143 foot usable flat lot located approximately a block from the subject property as a comparison. He claims Respondent applied a negative 50% influence factor to this usable land. Also, Petitioner testified that in 2011, the purportedly comparable property had an assessed value of \$2900, while the unusable subject lot has an assessed value of \$6400, further, demonstrating that the subject lot was overvalued. *Hiles testimony; Pet'r Ex. 12.*
17. Petitioner testified that in a previous Board hearing, real estate agent Kent Bowers testified that the subject lot has "no value." *Hiles testimony; Pet'r Ex. 2.*

#### **SUMMARY OF RESPONDENT'S CONTENTIONS**

18. Petitioner is utilizing the Form 133 petition to argue subjective issues. Respondent contends, however, that a taxpayer may only correct objective errors via a Form 133. Consequently, Respondent contends that Petitioner's Form 133 cannot be used to petition for changes that require subjective judgment. Respondent contends Petitioner should have filed a Form 130 petition in order to challenge his assessed value. *Newsome testimony; Resp't Ex. 1 & 3.*
19. Respondent's 2011 PRC shows the subject property is a 60 foot by 145 foot vacant lot with an assessed value of \$6400. In response to Petitioner questioning the vast difference in assessed value between 2011 and 2012 of the subject property, Respondent argues that the change on the subject property's assessed value between 2011 and 2012 was a result of the statewide mandated reassessment, whereby land base rates changed. *Newsome testimony; Resp't Ex. 2.*

## Analysis

20. Petitioner seeks to correct alleged errors in the 2011 assessment via Form 133 petition, which the DLGF has prescribed for use in the correction of error process under Ind. Code § 6-1.1-15-12. But only objective errors that can be corrected with exactness and precision can be addressed with a Form 133 petition.<sup>3</sup> These forms are not for changes that require subjective judgment. Ind. Code § 6-1.1-15-12; *O'Neal Steel v. Vanderburgh Co. Property Tax Assessment Bd. Of Appeals*, 791 N.E.2d 857, 860 (Ind. Tax Ct. 2003); *Barth Inc. v. State Bd. Of Tax Comm'rs*, 756 N.E.2d 1124, 1128 (Ind. Tax Ct. 2001); *Bender v. State Bd. Tax Comm'rs*, 676 N.E.2d at 1114 (Ind. Tax Ct. 1997); *Reams v. State Bd. Of Tax Comm'rs*, 620 N.E.2d 758, 760 (Ind. Tax Ct. 1993); *Hatcher v. State Bd. Of Tax Comm'rs*, 561 N.E.2d 852, 857 (Ind. Tax Ct. 1990).
21. A determination is objective if it hinges on simple, true or false findings of fact. *See Bender*, 676 N.E.2d at 1115. “[W]here a simple finding of fact does not dictate the result or discretion plays a role, [the] decision is considered subjective and may not be challenged through a Form 133 filing.” *Id.*
22. Petitioner challenged that the lot should have a negative influence factor reapplied and to some extent, the parcel’s assessed value for the year of 2011. Also, that a comparable property’s superior lot was assessed for less than the subject lot. Clearly, the challenge of the subject property’s value and whether or not another property is comparable requires subjective judgment.
23. Subjective judgment is required to apply influence factors. Individual parcels within a neighborhood may have peculiar conditions that are not reflected in the base rate of the land. Assessors use influence factors to account for how those conditions affect an

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<sup>3</sup> Additionally, Petitioner cannot avoid the statutory time limitations associated with the Form 131 review process by filing its claim on a Form 133 petition. *See Williams Indus. v. State Bd. Of Tax Comm'rs*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995) (stating that because the legislature has created specific appeal procedures, a taxpayer must comply with the statutory requirements of filing the proper petitions within a timely manner). *See also Lake County Prop. Tax Assessment Bd. Of Appeals v. BP Amoco Corp.*, 820 N.E.2d 1231, 1236-37 (Ind. 2005) (stating that because the taxpayer failed to challenge its assessments within the applicable time period for which a Form 130 was available, it was foreclosed from using a Form 133 for that purpose).

individual parcel's value. 2011 REAL PROPERTY ASSESSMENT GUIDELINES, ch. 2 at 43. Because it is directly tied to the determination of value, the estimation of the appropriate influence factor percentage, if any is subjective. As to Petitioner's claim that state law requires an objective application of a negative influence factor if certain conditions apply, the law is clear that an influence factor may not be challenged by a Form 133.

24. Petitioner argued that Respondent's purported change to the parcel's 2010 assessment from \$600 to \$6400, which was carried forward in 2011, was illegal, because it was made without cause. But, neither party offered any probative evidence regarding how or why the assessments were changed.
25. Petitioner also argued that because Respondent reinstated the property's 90% negative influence factor and subsequently reduced the assessment to \$700 in 2012, the same should apply for 2011. However, the Board and the Indiana Tax Court have repeatedly held that each assessment and each year stands alone. *See Fleet Supply, Inc. v. State Bd. Of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (“[F]inally, the Court reminds Fleet Supply that each assessment and each tax year stands alone. ... Thus, evidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later.”)
26. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

## SUMMARY OF FINAL DETERMINATION

27. The Board finds for Respondent.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

### - APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.